

Nick Gower, OSB No. 143274
319 SW Washington Street, Suite 614
Portland, Oregon 97204
Phone: (503) 507-3973
Fax: (503) 437-9170
Nick@gower.law

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

MATTHEW FAWCETT,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

CASE NO.: 1:22-cv-01327

COMPLAINT

BREACH OF CONTRACT
BREACH OF IMPLIED
COVENANT
NEGLIGENCE PER SE
Claim over \$75,000
Demand \$296,599.50

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, represented by the undersigned attorney, and allege as follows:

VENUE AND JURISDICTION

1. At all times material hereto, MATTHEW FAWCETT (hereafter "FAWCETT") was an individual domiciled in Jackson County, Oregon and owning property in Jackson County, Oregon.
2. At all times material hereto, STATE FARM FIRE AND CASUALTY COMPANY (hereafter "STATE FARM"), was an insurance corporation authorized to issue insurance and conduct

COMPLAINT

Page 1 of 10

Gower Law LLC
319 SW Washington Street, Suite 614
Portland, Oregon 97204
Phone: (503) 507-3973
Fax: (503) 437-9170

business in the State of Oregon, but is a foreign carrier with its principal place of business headquartered in another state.

3. The claim and controversy in this matter exceeds \$75,000.00
4. The acts and/or omissions that form the basis of this complaint took place in the State of Oregon, this Court has jurisdiction over this matter pursuant to 28 USC §1332, and Venue is proper in the Medford Division.

FACTS MATERIAL TO FAWCETT'S CLAIMS FOR RELIEF

5. FAWCETT was the beneficial owner of certain real property located in Jackson County, Oregon, and commonly referred to as 1025 Arana Dr., Phoenix, Oregon 97535 (hereafter "the Property").
6. The Property contained a single-family structure (hereafter "the Structure").
7. At all times material to this Complaint, the Property was insured by a rental dwelling policy issued by STATE FARM, specifically described as policy no.: 97-CL-A651-0 (hereafter "the Policy").
8. The Policy listed FAWCETT as a named insured.
9. At all times material to this Complaint, all premiums due from FAWCETT were paid and the Policy was in full force and effect.
10. In consideration for payment of premiums by FAWCETT, the Policy promised to provide coverage for direct physical loss to FAWCETT's Structure and personal property on an actual cash value (ACV) and replacement cost (RCV) basis, trees, shrubs, and plants, additional living expenses, extra replacement cost endorsements for the dwelling and

COMPLAINT

Page 2 of 10

Gower Law LLC
319 SW Washington Street, Suite 614
Portland, Oregon 97204
Phone: (503) 507-3973
Fax: (503) 437-9170

dwelling extensions, fair rental value for the dwelling, and other coverages set forth in the Policy.

11. On or about September 7, 2020, FAWCETT's Structure, other structures, personal property, and trees, shrubs, and plants suffered direct physical loss due to fire (hereafter "the Loss").

12. FAWCETT filed a claim in connection with the Loss.

13. STATE FARM assigned Claim Number 37-11G8-89H (hereafter "the Claim").

14. STATE FARM accepted the Claim.

15. STATE FARM opened an investigation into the Claim.

16. STATE FARM accepted coverage for the Loss.

17. STATE FARM evaluated the damages as a result of the Loss.

18. FAWCETT has performed all conditions precedent required for an ACV payment under the Policy.

19. FAWCETT has cooperated with STATE FARM's investigation and adjustment of the Claim.

20. STATE FARM issued partial payments related to the Loss.

21. On February 28, 2022, in an e-mail to STATE FARM, FAWCETT detailed the payments STATE FARM made as a result of the Loss.

- a. FAWCETT explained that the payments on the Claim were not categorized or labeled by the amount paid under each coverage.
- b. FAWCETT further explained that it appeared STATE FARM underpaid the claim by \$8,232.20 (the exact amount of the coverage for trees, shrubs, and plants under the Policy).

22. On March 24, 2022, STATE FARM responded to FAWCETT with a letter that:
- a. Explained that “the claim had been completed and no further handling is needed at this time;”
 - b. Failed to address how the payments on the Claim were categorized;
 - c. Failed to address FAWCETT’s concern regarding the underpayment of \$8,232.20 for trees, shrubs, and plants;
 - d. Failed to mention trees, shrubs, or plants at all; and
 - e. Directed FAWCETT to refer to the provisions of the Policy for filing suit against State Farm.
23. As a result of the breaches of the Policy alleged herein, FAWCETT has been forced to hire an attorney to represent him in this matter. FAWCETT is entitled to recover his reasonable attorney fees incurred herein under O.R.S 742.061.
24. FAWCETT is entitled to recover prejudgment interest on his damages at the legal rate of 9% per annum.

CLAIM #1 – BREACH OF CONTRACT: FAILURE TO
FULLY PAY DAMAGE TO PROPERTY

25. FAWCETT herein re-allege and re-incorporate all preceding paragraphs into this cause of action.
26. STATE FARM did not fully pay its own evaluation of FAWCETT’s damages from the Loss.
27. STATE FARM has underpaid the actual cash value damages as a result of the Loss by approximately \$8,232.20.

28. STATE FARM has refused, failed, and neglected to pay FAWCETT the additional actual cash value damages owed as a result of the Loss.
29. STATE FARM's delay of payments and significant underpayment of damages owed as a result of the Loss is a material breach of the Policy.
30. STATE FARM's delay of payments and significant underpayment of FAWCETT's covered damages as a result of the Loss has obstructed FAWCETT's ability to complete repairs and prevented FAWCETT from complying with any conditions precedent for replacement cost coverage in the Policy.
31. As a result of STATE FARM's material breach of the Policy and conduct alleged herein preventing FAWCETT's compliance with the replacement cost provisions of the Policy, FAWCETT has suffered an estimated \$23,019.44 regardless of repair or replacement, consisting of:
- a. \$8,232.20 for actual cash value damages to property;
 - b. \$14,787.24 under the extra replacement cost endorsement for dwelling; and
 - c. \$2,438.78 for extra dwelling replacement cost endorsement for dwelling extensions.

CLAIM #2 – BREACH OF CONTRACT: FAILURE TO
FULLY PAY FAIR RENTAL VALUE COVERAGE

32. FAWCETT herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.
33. STATE FARM issued partial payments under the fair rental value coverage of the Policy.

34. STATE FARM failed, refused, or neglected to pay FAWCETT the full fair rental value damages.

35. STATE FARM breached the Policy by underpaying FAWCETT's full fair rental value damages.

36. FAWCETT has suffered approximately \$6,000 in fair rental value damages as a result of STATE FARM's breach.

CLAIM #3 – BREACH OF IMPLIED COVENANT

37. FAWCETT herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.

38. STATE FARM failed to make full payment, refused to make full payment, or delayed full payment for covered losses, in violation of the policy of insurance, thus causing damages to FAWCETT.

39. STATE FARM violated the implied covenant of good faith and fair dealing in failing properly to investigate the loss, adjust the claim, and pay FAWCETT for all the losses sustained causing damages to FAWCETT.

40. It was foreseeable to STATE FARM that if it breached its obligations under the insurance policy, FAWCETT would suffer damages.

41. As a result of the breach of contract by STATE FARM, FAWCETT has suffered damages as set forth in paragraphs 31 and 36.

CLAIM #4 – NEGLIGENCE PER SE – VIOLATIONS OF ORS 746.230

42. FAWCETT herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.

43. Because STATE FARM is a corporation that sells insurance and provides insurance coverage to Oregon consumers, the Oregon Legislature through O.R.S. 746.230 requires STATE FARM to follow a standard of care in the performance of its insurance contracts independent of, in addition to, and outside of the terms of the insurance contract.

44. STATE FARM negligently performed its obligations under O.R.S. 746.230 in its review, investigation, and eventual decision to underpay insurance benefits following the devastating accidental loss suffered by FAWCETT in one or more of the following ways:

- a. Misrepresenting facts or policy provisions in settling claims, in violation of O.R.S. 746.230(1)(a);
- b. Failing to adopt and implement reasonable standards for the prompt investigation of claims, in violation of O.R.S. 746.230(1)(c);
- c. By refusing to pay the full insurance benefits without conducting a reasonable investigation based on all available information, in violation of O.R.S. 746.230(1)(d);
- d. By not attempting, in good faith, to promptly and equitably settle a claim in which the insurer's liability has become reasonably clear, in violation of O.R.S. 746.230(1)(f);

- e. By compelling plaintiff to initiate this litigation to recover amounts due by offering substantially less than the amount of the covered loss pled as damages in this action, in violation of O.R.S. 746.230(1)(g);
 - f. Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application, in violation of O.R.S. 746.230(1)(h);
 - g. Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made, in violation of O.R.S. 746.230(1)(j); and
 - h. Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim, in violation of O.R.S. 746.230(1)(m).
45. STATE FARM knew, or in the exercise of reasonable care as a corporation engaged in the business of marketing and selling insurance, should have known, that one or more of its foregoing acts or omissions would create an unreasonable risk of harm to FAWCETT.
46. As a result of STATE FARM's negligent performance of its statutory obligations when administering the insurance contract, the insured suffered the economic loss of the value of the contractual benefit as set forth in paragraphs 31 and 36.
47. As a result of STATE FARM's negligent performance of its statutory obligations when administering the insurance contract, FAWCETT suffered the noneconomic loss of increased

emotional distress and anxiety caused by having fewer financial resources to navigate his devastating accidental loss, in an amount not to exceed \$10,000.

48. STATE FARM knew, or in the exercise of reasonable care as a corporation engaged in the business of marketing and selling insurance, should have known, that one or more of its foregoing acts or omissions would create a highly unreasonable risk of harm to FAWCETT. In committing those acts and/or omissions, defendant either intentionally disregarded the duty of care it owed to FAWCETT under O.R.S. 746.230(1) or was, at minimum, recklessly indifferent to the obligations it owed FAWCETT pursuant to its statutory duties of care. FAWCETT is entitled to punitive damages in the amount of \$255,141.28.

PRAYER

WHEREFORE, FAWCETT pray for judgment including:

1. \$25,458.22 regardless of repair or replacement, consisting of:
 - a. \$8,232.20 for actual cash value damages to property;
 - b. \$14,787.24 under the extra replacement cost endorsement for dwelling; and
 - c. \$2,438.78 for extra dwelling replacement cost endorsement for dwelling extensions.
2. Fair Rental Value damages not to exceed \$6,000;
3. Non-economic damages not to exceed \$10,000;
4. Punitive damages in the amount of \$255,141.28;
5. Costs and disbursements incurred herein;
6. Attorneys' fees pursuant to O.R.S 742.061; and

COMPLAINT

Page 9 of 10

Gower Law LLC
319 SW Washington Street, Suite 614
Portland, Oregon 97204
Phone: (503) 507-3973
Fax: (503) 437-9170

7. Prejudgment interest of 9%.

DATED: September 2, 2022

GOWER LAW LLC

s/ Nick Gower

Nick Gower, OSB No. 143274

Nick@gower.law